IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 2440 OF 2005

Dr. Vijaya P. Rathod .. Petitioner

V/s

Municipal Corporation of Greater Mumbai & Ors. .. Respondents

Mr.G.D. Utangale with Mr.Mihir Desai for the Petitioner.

Ms.P.A. Purandare for the Respondents.

CORAM : H.L. GOKHALE & ABHAY S. OKA, JJ.

DATE : 24TH JANUARY 2006

P.C. :

1. Heard Mr.Utangale in support of this petition. Ms.Purandare appears for the Respondents.

2. Rule. Rule is made returnable forthwith. A reply has been filed by the Municipal Corporation which is treated as a reply to the main petition.

3. The Petitioner is a MBBS doctor and she was working as a House Officer in Gynaecology & Obstetrics in Respondent No.3 Hospital run by the 1st Respondent Municipal Corporation. The 1st Respondent conducted a

test for one seat to be filled in the Colleges of Physicians and Surgeons. For that purpose, a written test was conducted on 9th August 2005. This test was a postponed test. The test was earlier proposed on 5th August 2005, but because of heavy rains the test was so postponed. It appears that for this one post in the course of Gynaecology & Obstetrics, there were 47 applicants and out of which 16 appeared for the test. The selection list was prepared wherein the Petitioner stood at No.1. It is her case that the result of this test was declared on 9th August 2005 itself. It is her further case that a letter was addressed to the College of Physicians and Surgeons by the Superintendent of concerned college on 10th August 2005 informing that she had been so selected. It is however the case of the Municipal Corporation that it is not signed by the Medical Superintendent, but it is signed by the Unit Head. The Petitioner deposited the required amount for the post on 10th August 2005.

4. It appears that subsequently this selection was cancelled and now three posts are advertised including two posts for Gynaecology & Obstetrics. The case of the Petitioner is that she had been selected in August 2005.

This being so, her selection cannot be cancelled. A writ of mandamus is therefore sought that the Petitioner should be given an appointment as per the selection done in August 2005.

5. A reply has been filed by the Medical Superintendent of the Kurla Bhabha Hospital affirmed on 21st September 2005. It is stated therein that the number of students, who had appeared for the test, was less and this was because of the heavy rains which took place in the last week of July 2005. It is further stated that the Respondents have received number of phone calls due to non-availability of trains and buses. Ms.Purandare for the Municipal Corporation has shown the list of students who were supposed to appear for this selection and they were from different parts of the State though many of the students from different parts of the State have appeared for the test which was held on 9th August 2005.

6. Be that as it may, the question arises as to whether the selection done by the Respondents after following due procedure could be cancelled by them. It is pertinent to note that the selection test was

initially to be held on 5th August 2005 and for the difficulties stated in the reply, the selection procedure was deferred to 9th August 2005. On that day, 16 out of 47 candidates appeared. It is also material to note that thereafter the Corporation has not done the selection procedure for over 6 months and now another advertisement has been given wherein two posts of Gynaecology and Obstetrics are advertised.

7. Mr.Utangale for the Petitioner submits that the Petitioner should be deemed to have been admitted in pursuance to the selection made in August 2005 and if the Corporation is now proceeding to conduct further selection, one seat ought to be deleted from that selection procedure and it should be allotted to the Petitioner.

8. We have considered the submissions of both the counsel. What we find is that the selection procedure was initially fixed on a date. It was once postponed due to the heavy flooding in the city. On the postponed date, a good number of candidates did appear, though not all. They came over from different parts of the State. Although that procedure is cancelled, the next selection

is not held within a reasonable time. It is being held after more than six months. We are told that in the meanwhile another batch of students has become eligible and the Petitioner will have to compete against them. This is apart from losing one term. Besides, no rules are shown to justify the action taken.

9. In the circumstances, in view of these facts of the present case, we allow this petition and direct the Respondents to allot one post out of the two posts meant for Gynaecology & Obstetrics to the Petitioner. The selection procedure can go ahead for the remaining post in Gynaecology & Obstetrics or for that matter Paediatrics. We make it clear that the training for one and half years for the post will be undertaken and completed hereafter. The College of Physicians and Surgeons will follow the necessary admission procedure in the light of this order.

10. Rule is made absolute as above.

(H.L. GOKHALE, J.)

(ABHAY S. OKA, J.)